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In the Matter of

Amendment of Part 95 of
the Commission's Rules to
Allow Interactive Video
and Data Service licensees
to Provide Mobile Service
to Subscribers

WT Docket No. 95-47

To: The Commission

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The IVDS licensees ("Licensees") hereby submit these Comments in response to the *Notice of Proposed Rule Making* released on May 5, 1995 (the "Notice") by the Commission in the above-captioned proceeding.^{1/} The Licensees support the Commission's proposal to allow IVDS licensees to provide mobile service to subscribers, as this will provide IVDS licensees with additional flexibility in the types of services they can offer, thereby increasing their ability to attract capital investment and add subscribers to this new service. The Licensees also strongly endorse the substantial relaxation of the Commission's 5-second duty cycle standard.^{2/} The Licensees believe that the addition of mobility and the elimination of the 5-second duty cycle will, together, dramatically enhance the viability of IVDS, incentivize investment in the IVDS industry and

^{1/} Attached as Schedule A is a list of the Licensees and the markets which they represent.

^{2/} See Rule Section 95.863.

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expand the range of services and uses of IVDS spectrum. All of these objectives are consistent with the public interest.

I. INTRODUCTION

The Licensees are a group of IVDS licensees who were awarded licenses by the FCC pursuant to auctions held last summer. Over the course of the last eleven months, the Licensees have committed substantial resources in an effort to launch the first wave of wireless interactive services. Most of the Licensees have joined the IVDS Equipment Coalition ("Coalition"), an organization established to attract IVDS financing and equipment proposals. In the context of the Coalition and individually, the Licensees have explored numerous business plans, equipment options and market studies, and remain optimistic that IVDS will become a viable service. Today, however, the initiation of a viable IVDS service has been frustrated by a plethora of entry barriers -- access to capital, questions concerning the extent of consumer demand for certain services, equipment limitations and regulatory restrictions. The Licensees believe that the Commission's proposal will result in the expansion of the services that IVDS licensees can offer and the easing of technical restrictions will foster financial investment in IVDS. These results will facilitate innovation in equipment and services and, in general, provide the necessary environment for IVDS to become a viable, long-term service.

**II. ALLOWING IVDS LICENSEES TO PROVIDE MOBILE
SERVICE WILL BENEFIT THE PUBLIC INTEREST**

1. As initially conceived, IVDS was intended to be a television-based family of services such as games, home shopping and other transactional uses. Now, however, the Licensees believe that the first substantial market for IVDS may be a series of niche services carefully designed to fulfill various specific consumer demands. The Commission's efforts to permit IVDS to transmit to and from mobile locations would create numerous uses for IVDS that are not currently available, such as sports updates to travelers or commuters, tracking package locations and confirming a child's safety. See EON Corporation ("EON"), Petition for Rulemaking, RM-8476, filed May 11, 1994 (hereinafter "Petition"). The Licensees also believes that the IVDS spectrum will be very useful for TV-based messaging for families and communities as well as for data applications such as meter reading, and the transmission of ATM and credit card verifications as well as stock quotes.

2. The Commission correctly recognized that "allowing IVDS licensees to provide ancillary mobile services would enhance telecommunication service offerings for consumers, producers, and new entrants, and encourage rapid deployment and growth of IVDS services." Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services to Subscribers, Notice of Proposed Rule Making in WT Docket No. 95-47, FCC 95-158, released May 5, 1995, ¶ 7 (hereinafter "Notice"). This is consistent with the Commission's

goals of encouraging the development of innovative communications, which it emphasized when adopting rules to govern IVDS. See Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video and Data Services, Report and Order, 7 FCC Rcd 1630 (1992).

3. The Commission also recognized that mobile service would facilitate public access to telecommunication services. Notice, ¶ 7. Accordingly, the Commission should not limit mobile service only to subscribers of fixed service because this would limit the number of subscribers who would utilize the service, contrary to the purpose of offering mobile service. The Licensees request that the Commission specifically determine that one may subscribe for mobile service without also subscribing for fixed service.

4. Mobile IVDS operations would also benefit the public interest by, in all likelihood, causing less interference to existing television stations. EON has asserted that mobile units can transmit with a maximum effective radiated power ("ERP") of 100 milliwatts, a power level significantly less than the presently-authorized maximum of 20 watts. Petition, p. 5. The Association for Maximum Service Television, Inc. has filed in support of EON's proposal to offer mobile IVDS operations, recognizing that any interference from mobile IVDS operations is highly unlikely and, under existing Commission Rules, any such interference would have to be quickly corrected by the IVDS provider.^{3/}

^{3/} See Rule Section 95.861. See also, letter dated May 25, 1994 from Julian L. Shepard, Vice President and General Counsel of The Association for Maximum Service Television, Inc.

5. The Licensees believe that it would be a mistake, however, for the Commission to limit the ERP of all RTUs designed to provide mobile service to 100 milliwatts. Mobile units would be located farther from the television receiver and no closer to the antenna than the presently-authorized set-top box and, accordingly, should be governed by the limitations established under Section 95.855 and 95.859. Moreover, limiting the ERP of all portable or fixed IVDS units to 100 milliwatts would unnecessarily restrict currently undiscovered uses for IVDS. As noted above, Section 95.861 of the Commission's Rules requires IVDS licensees to avoid interference with the reception of television stations operating on Channel 13. 47 C.F.R. § 95.861. Within this interference protection parameter, IVDS licensees should be provided with the opportunity to offer as many different services as technology and subscribers will allow, so that the full development of IVDS can be realized.

6. In addition, requiring all fixed and portable IVDS units to operate at 100 milliwatts will increase the cost of constructing IVDS systems exponentially because so many additional cells would have to be constructed to provide the same "footprint" as can currently be provided at higher power levels, permitted pursuant to Sections 95.855 and 95.859. There is no question that increased costs will be a significant barrier to entry, contrary to the public interest.

7. Further, power limits on IVDS mobile operation should be measured in terms of average power rather than peak power. In any system there are going to be power surges and decreases in power output. Under these real-world circumstances, average power more accurately depicts the overall RTU power output. Because IVDS licensees need to be able to accurately measure potential interference problems with the Channel 13 broadcast signal, an average power standard will provide a more accurate measure of system activity.

8. In addition, mobile-RTU-to-mobile-RTU communications should be permitted. Although one mobile application for IVDS could be to permit subscribers at itinerant locations to access information, products and services, mobile uses of IVDS should not be confined to such applications. IVDS licenses should be encouraged to promote a variety of applications for use on mobile systems.

**III. THE COMMISSION SHOULD NOT RESTRICT
IVDS LICENSEES TO A 5-SECOND DUTY CYCLE**

9. In the Notice, the Commission also proposed to apply the existing 5-seconds-per-hour duty cycle limitation to mobile IVDS operations. Notice, ¶ 2. The 5-second duty cycle significantly restricts the uses for which IVDS can be applied, both as a fixed service and as a mobile service. In addition, as noted above, the existing interference protections provided through Section 95.855 and 95.859 of the Commission's Rules provide Channel 13 broadcasters with more than sufficient protection against interference from IVDS operators. Accordingly, the 5-second duty

cycle is redundant and unnecessary.

10. It is also increasingly apparent that the 5-second duty cycle also operates as a ceiling on IVDS licensees ability to compete with other high-speed data providers. The licensee of the B side IVDS license for the Philadelphia PA MSA, Kingdon R. Hughes, has requested a waiver of the Commission's Rules restricting RTUs to a 5-second duty cycle, stating that his technically-feasible proposal to install RTUS on bank ATM machines necessitates a duty cycle larger than 5-seconds per hour. Kingdon R. Hughes, Petition for Rule Waiver, filed June 5, 1995, p. 4. The Licensees further understand that Hughes' proposed application would operate substantially more efficiently, thus saving money and allowing the provider to offer its services for less to consumers. Such a result is clearly in the public interest. The Licensees expect that certain of the applications which they are currently investigating may not be viable unless the 5-second duty cycles is waived or substantially relaxed.

11. As the Commission is well aware, IVDS is a new technology whose full potential is being developed on an ongoing basis. The Commission should not adopt rules to limit this new service, provided that any new uses comply with the Commission's requirements governing interference with broadcast Channel 13.^{4/}

^{4/} Though Hughes' Waiver Request covers only the areas outside of the predicted Grade B service contour of the local Channel 13 broadcaster, the Licensees seek the waiver or at least the relaxation of the 5-second duty cycle in all areas and believe that their obligation to protect all Channel 13 broadcasters from harmful interference is sufficient protection for the broadcaster's interest in this regard.

12. Finally, the Commission recently proposed no duty cycle limits in the 216-217 MHz band for auditory assistance and public safety systems. Accordingly, the Commission should not restrict IVDS licensees to a 5-second duty cycle.

**IV. IVDS WOULD BE BEST UTILIZED BY ALLOWING
MAXIMUM FLEXIBILITY OF THE SPECTRUM**

13. The Commission also sought comment on whether any restrictions should be placed on the types of ancillary mobile services that IVDS licensees would be permitted to offer. Notice, ¶ 10. The Licensees believe that ancillary service should be construed broadly. As noted previously, many possible uses for IVDS remain unknown, and the Commission should encourage the development and flexibility of this new service by not placing restrictions on the services that can be provided by IVDS within the allotted spectrum. For example, if IVDS licensees were permitted to provide interconnected service, subscribers would not be forced to purchase new equipment as they travel from city to city or from state to state if they wish to utilize any of the various IVDS operations. Such a result is surely in the public interest.

V. CONCLUSION

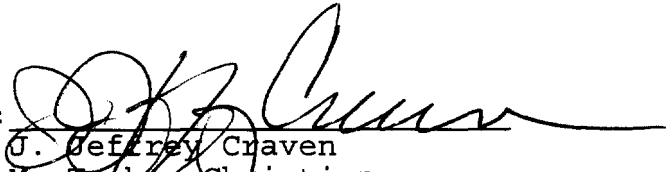
14.. For the reasons stated above, the Licensees support the Commission's proposal to allow IVDS licensees to provide mobile service without any requirement for a mobile subscriber to also subscribe to the fixed service. Permitting mobile IVDS operations would expand access to investment capital and increase the services for which IVDS can be utilized, thereby increasing the number of

subscribers to this new service and consequently, promoting the public interest. Furthermore, mobile IVDS operations would not cause interference to television stations and, in any event, interference would have to be promptly corrected under the existing FCC Rules. The Licensees do not believe that IVDS operations, either mobile or fixed, should be limited to 100 milliwatts or to a 5-second duty cycle since such an arbitrary limitation is not necessary to protect the interests of the broadcasters. These power and operating limitations unnecessarily restrict the types of services that IVDS licensees can provide, contrary to the Commission's goal of encouraging the development of innovative communications services. Indeed, the public interest will be advanced by the addition of mobility and the elimination of the 5-second duty cycle.

Respectfully submitted,

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LOLI, INC.
VISION TV, INC.
TRANSPACIFIC INTERACTIVE, INC.
NEW WAVE COMMUNICATIONS, INC.
IVDS ON-LINE PARTNERSHIP
MAR PARTNERSHIP
DUNBAR TELEVISION CORP.**

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SCHEDULE A

KMC Interactive

Cleveland, OH MSA# 16A
Buffalo, NY MSA# 25B
Hamilton-Middleton, OH MSA# 145A

Whitehall Wireless Corp.

Baltimore, MD MSA# 14B
Atlantic City, NJ MSA# 134A

Loli, Inc.

Hartford, CT MSA# 32A
Rochester, NY MSA# 34B
Syracuse, NY MSA# 53A
Shreveport, LA MSA# 100B
Visalia, CA MSA# 150A
Portland, ME MSA# 152A
Portsmouth, NH MSA# 156A
El Paso, TX MSA# 81B
Janesville, WI MSA# 216A
Rockford, IL MSA# 131A
Utica-Rome, NY MSA# 115B
Elmira, NY MSA# 284A
San Angelo, TX MSA# 294A
Anchorage, AK MSA# 187B
Gulf of Mexico MSA# 306A
Bridgeport, CT MSA# 42B
Orange County, NY MSA# 144B
Manchester, NH MSA# 133B

Vision TV

Odessa, TX MSA #255B

TransPacific Interactive, Inc.

Bakersfield, CA MSA# 97A

New Wave Communications, Inc.

Lorraine-Ely., OH MSA# 136A
Reno, NV MSA# 171B
Chico, CA MSA# 215B
Redding, CA MSA# 254B
Great Falls, MT MSA# 297B

IVDS On-Line Partnership

Erie, PA MSA# 130A
Poughkeepsie, NY MSA# 151A
Wilmington, NC MSA# 218A

MAR Partnership

Battle Creek, MI MSA# 177A
Clarksville, TN MSA# 209B
Kokomo, IN MSA# 271B
Pittsfield, MA MSA# 213B

Dunbar Television Corp.

York, PA MSA# 99B
Lansing, MI MSA# 78B

Community Teleplay, Inc.

Norfolk-Virginia Beach, VA MSA# 43B

TV-Active, L.L.C.

Jackson, MS MSA# 106A
Springfield, OH MSA# 180B
Mansfield, OH MSA# 231A

America 52 East, Inc.

Daytona Beach, FL MSA# 146A

America 52 West, Inc.

Colorado Springs, CO MSA# 117A
St. Cloud, MN MSA# 198A
Fort Collins-Loveland, CO MSA# 210A
Richland-Kennewick, WA MSA# 214B
Pueblo, CO MSA# 241A

American Interactive East, Inc.

Canton, OH MSA# 87A
Asheville, NC MSA# 183B

American Interactive West, Inc.

Honolulu, HI MSA# 50B
Tacoma, WA MSA# 82B

On-Screen USA Interactive, Inc.

Modesto, CA MSA# 142B
Wheeling, WV-OH MSA# 178A

Racine, WI MSA# 189A

Premier Interactive, Inc.

Salina, CA MSA# 126B
Roanoke, VA MSA# 157B
Yakima, WA MSA# 191B

Remote Vision Interactive, Inc.

Akron, OH MSA# 52B
Duluth, MN-WI MSA# 141B
Billings, MT MSA# 268A

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